



DEPARTMENT OF THE ARMY

U.S. Army Corps of Engineers  
WASHINGTON, D.C. 20314

REPLY TO  
ATTENTION OF:

CERE-MM (405-80)

2 October 1989

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Real Estate Procedures Pursuant to McKinney Act

1. Forwarded for appropriate action and implementation are procedures to be followed as a result of the Stewart B. McKinney Homeless Assistance Act and the recent U.S. District Court Order.

2. Districts will survey/review their civil works real property holdings at least annually pursuant to 40 U.S.C. Sec. 483(b), 41 CFR Sec. 101-47.802(a) or Executive Order 12512.

3. Any excess, underutilized or unutilized property identified as a result of a survey will be reported. A questionnaire compiled by the Department of Housing and Urban Development (HUD) will be completed for each property identified as excess, underutilized or unutilized. The questionnaires listing such real property will be forwarded to the Division by the District for reporting to HQUSACE on a quarterly basis. The utilization/EO 12512 surveys will not be forwarded to HUD in lieu of the questionnaires.

4. Divisions will forward each questionnaire to HQUSACE, ATTN: CERE-M within 15 calendar days of the quarters end.

5. HQUSACE will forward the questionnaires to HUD within 25 days of the quarters end for a determination of suitability as a facility to assist the homeless.

6. Property reported to HUD for a determination of suitability need only be reported once annually. In the event that the property is identified as being underutilized or unutilized as a result of the next annual survey, then, the property will again be reported to HUD for screening.

7. Within 60 days, HUD will make suitability determinations on each of the properties identified and will publish a list of properties determined to be suitable in the Federal Register on a weekly basis. Simultaneously, HUD will notify DA of the properties determined to be suitable and request that within 30 days DA provide HUD, the Department of Health and Human Services (HHS), and the

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General Services Administration (GSA) with a statement of intent regarding DA's:

(a) intention to declare the property excess to the agency's need under applicable law; or

(b) intention to make the property available on an interim basis (under lease for at least one year) for use as a facility to assist the homeless; or

(c) reasons as to why the property cannot be declared excess or made available on an interim basis to assist the homeless.

8. Within the 30 day suspense period, HQUSACE will notify the affected Division/District and request availability determination. Divisions/Districts will respond within the allotted suspense.

9. HQUSACE will prepare a consolidated DA response for signature by Director of Real Estate to HUD, HHS and GSA incorporating civil works property information received from COE FOAs and from DAEN-ZCI regarding information received from MACOMs and installations on military property.

10. Property determined by HUD to be unsuitable as a facility to assist the homeless may be disposed of or outgranted as applicable.

11. Property determined by HUD as being suitable to assist the homeless but declared excess by DA will be reported to GSA for disposal in accordance with ER 405-1-12. A statement that "The property has been screened by the Department of Housing and Urban Development (HUD) to determine its suitability as a facility to assist the homeless and was found to be suitable" will be included in the report to GSA.

12. Upon request, Districts will furnish homeless assistance providers with readily available information on excess and non-excess property determined to be suitable by HUD and declared available by DA. Districts will also schedule site inspections upon request and provide a copy of the attached lease stipulations to the requestor. Districts will not expend any funds for information not readily available other than nominal costs of reproduction.

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13. When interest is expressed by a provider in leasing property, the District is to refer requestor to the instructions outlined in the weekly publication of the Federal Register. Requestors should submit a written expression of interest and a request for the necessary application forms within 30 days from the notice of availability to Ms. Judy Breitman, Division of Health Facilities Planning, Public Health Services, HHS, Room 17A-10 Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857; Phone: (301) 443-2265.

14. The District will document all actions taken and notify Division and HQUSACE of each action.

15. Upon receipt of validation from HHS as to the approval of the qualifications of the homeless assistance provider, the District will then initiate leasing actions for a one year lease in accordance with ER 405-1-12. Due to the controversial nature of the action, ASA(I&L) approval will be required for each action.

16. If no expression of interest is received on a suitable property from a homeless assistance provider within the 30-day period, the property may then be retained, transferred or disposed of in accordance with applicable law.

Usual outgrant/disposal procedures apply when (1) the property has not been identified as excess, unutilized or underutilized pursuant to a survey; (2) the property has been determined as unsuitable by HUD; or (3) authorized by special legislation.

17. For Divisions/Districts supporting a military mission, those offices are not responsible for reporting excess, underutilized or unutilized military property to HUD for suitability determination. Reporting such military property is a responsibility of the appropriate MACOM and DAEN-ZCI. However, Districts will be requested to initiate interim leasing actions IAW AR 405-80 on those properties which have been declared suitable by HUD and for which HHS has approved the qualifications of the homeless assistance provider. The attached lease stipulations will also be used in leases to homeless assistance providers for military real property.

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18. A timelines chart is also forwarded for your information.

FOR THE DIRECTOR:

*Roseann R Bindner*

Encl

ROSEANN R. BINDNER  
Acting Chief, Management and  
Disposal Division  
Directorate of Real Estate

DISTRIBUTION:

COMMANDERS

LOWER MISSISSIPPI VALLEY DIVISION, ATTN: CELMV-RE  
MISSOURI RIVER DIVISION, ATTN: CEMRD-RE  
NEW ENGLAND DIVISION, ATTN: CENED-RE  
NORTH ATLANTIC DIVISION, ATTN: CENAD-RE  
NORTH CENTRAL DIVISION, ATTN: CENCD-RE  
NORTH PACIFIC DIVISION, ATTN: CENPD-RE  
OHIO RIVER DIVISION, ATTN: CEORD-RE  
PACIFIC OCEAN DIVISION, ATTN: CEPD-RE  
SOUTH ATLANTIC DIVISION, ATTN: CESAD-RE  
SOUTH PACIFIC DIVISION, ATTN: CESP-RE  
SOUTHWESTERN DIVISION, ATTN: CESWD-RE

CF w/encl:

COMMANDERS

MEMPHIS DISTRICT, ATTN: CELMM-RE  
NEW ORLEANS DISTRICT, ATTN: CELMN-RE  
ST. LOUIS DISTRICT, ATTN: CELMS-RE  
VICKSBURG DISTRICT, ATTN: CELMK-RE  
KANSAS CITY DISTRICT, ATTN: CEMRK-RE  
OMAHA DISTRICT, ATTN: CEMRO-RE  
BALTIMORE DISTRICT, ATTN: CENAB-RE  
NEW YORK DISTRICT, ATTN: CENAN-RE  
NORFOLK DISTRICT, ATTN: CENAO-RE  
DETROIT DISTRICT, ATTN: CENCE-RE  
ROCK ISLAND DISTRICT, ATTN: CENCR-RE  
ST. PAUL DISTRICT, ATTN: CENCS-RE  
ALASKA DISTRICT, ATTN: CENPA-RE  
PORTLAND DISTRICT, ATTN: CENPP-RE  
SEATTLE DISTRICT, ATTN: CENPS-RE  
WALLA WALLA DISTRICT, ATTN: CENPW-RE  
HUNTINGTON DISTRICT, ATTN: CEORH-RE  
LOUISVILLE DISTRICT, ATTN: CEORL-RE

RE

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DISTRIBUTION (cont.)

COMMANDERS

NASHVILLE DISTRICT, ATTN: CEORN-RE  
PITTSBURGH DISTRICT, ATTN: CEORP-RE  
JACKSONVILLE DISTRICT, ATTN: CESAJ-RE  
MOBILE DISTRICT, ATTN: CESAM-RE  
SAVANNAH DISTRICT, ATTN: CESAS-RE  
LOS ANGELES DISTRICT, ATTN: CESPL-RE  
SACRAMENTO DISTRICT, ATTN: CESP-RE  
ALBUQUERQUE DISTRICT, ATTN: CESWA-RE  
FT. WORTH DISTRICT, ATTN: CESWF-RE  
GALVESTON DISTRICT, ATTN: CESWG-RE  
LITTLE ROCK DISTRICT, ATTN: CESWL-RE  
TULSA DISTRICT, ATTN: CESWT-RE

HQDA, ATTN: DAEN-ZCI

## ARMY LEASING STIPULATIONS UNDER MCKINNEY ACT

THESE CONDITIONS ARE FURNISHED TO ASSIST COE DIVISIONS AND THEIR DISTRICTS, MACOMS AND THEIR INSTALLATIONS IN PROTECTING DEPARTMENT OF THE ARMY INTERESTS WHEN DA REAL PROPERTY IS BEING MADE AVAILABLE FOR LEASE PURSUANT TO THE STEWART B. MCKINNEY HOMELESS ASSISTANCE ACT. THE CONDITIONS WILL BE ROUTINELY INCLUDED IN LEASES TO HOMELESS ASSISTANCE PROVIDERS AND SHOULD BE MADE AVAILABLE TO THOSE ORGANIZATIONS AT THE TIME THEY EXPRESS AN INTEREST IN PROPERTY DECLARED SUITABLE BY HUD AND SUBSEQUENTLY AVAILABLE BY DA FOR USE AS A FACILITY TO ASSIST THE HOMELESS. AT NO TIME SHOULD THESE CONDITIONS BE CONSTRUED AS A ROADBLOCK TO PREVENT FACILITIES FROM BEING LEASED TO HOMELESS PROVIDERS BUT SHOULD BE A MEANS TO PROTECT GOVERNMENT INTERESTS. THE CONDITIONS HAVE BEEN COMPILED FROM LEASES OF EXISTING OPERATING SHELTERS UNDER THE DA SHELTER PROGRAM. ADDITIONAL CONDITIONS MAY BE INCLUDED BY THE DISTRICT/INSTALLATION AS MAY BE APPLICABLE TO THE SITUATION.

NOTE THAT INSTRUCTIONS TO THE DISTRICT/INSTALLATION ARE GIVEN BELOW IN CAPITAL LETTERS AND SHOULD BE OMITTED FROM THE FINAL SET OF CONDITIONS PRIOR TO LEASE ISSUANCE.

X. That the consideration for this Lease is the maintenance, protection, repair and restoration of the property herein leased.

[IF PROPERTY IS LOCATED WITHIN AREA OF EXCLUSIVE LEGISLATIVE JURISDICTION, FOLLOWING CONDITION IS APPLICABLE]:

X. That the Lessee shall not assume beneficial occupancy for operation of the "Shelter for the Homeless" Program until the State of [INSERT NAME OF STATE] has formally accepted retrocession of legislative jurisdiction over the entire leased area from exclusive United States legislative jurisdiction to concurrent legislative jurisdiction thereby assuring concurrent jurisdiction in both the United States and the State of [INSERT NAME OF STATE] in the area.

X. That the term "said officer" as referred to herein shall mean either the [COMMANDER OF NAME OF MILITARY INSTALLATION IF MILITARY PROPERTY OR PARK MANAGER IF CIVIL

WORKS PROPERTY] or the District Engineer, U.S. Army Corps of Engineers, [INSERT NAME AND ADDRESS OF DISTRICT], and shall include their duly appointed successors and their authorized representatives.

X. That the use and occupation of the premises hereby leased shall be subject to the general supervision and approval of the officer having immediate jurisdiction over the property and to such rules and regulations as may be prescribed by him from time to time. The Lessee hereby assumes the responsibility of contacting the [INSTALLATION/PROJECT] to familiarize itself with pertinent [INSTALLATION/PROJECT] regulations. The Lessee will be required to sign a statement, provided by the installation, to indicate compliance with this condition.

X. That the Lessee has inspected and knows the condition of the leased property, and it is understood that the same is hereby leased without any representation or warranty by the Government whatsoever, and without obligation on the part of the Government to make any alterations, repairs, or additions thereto.

X. That, subject to the limitations of Condition X hereof with respect to restoration of the property, all portions of the leased property shall at all times be protected and maintained in good order and condition by and at the expense of the Lessee.

X. That the Lessee shall neither transfer nor assign this Lease or any property on the demised premises, nor sublet the demised premises or any part thereon, nor grant any interest, privilege, or license whatsoever in connection with the Lease without permission in writing from the said officer, which approval shall not be unreasonably withheld, except that use and occupancy of the demised premises for the "Shelter for the Homeless" and its operation by [INSERT NAME OF LESSEE/OPERATOR] and/or a contractor selected by the Lessee is approved.

X. That the right is hereby reserved to the United States, its officers, agents, and employees to enter upon the said premises at any time for the purpose of inspection and inventory and when otherwise deemed necessary for the

protection of the interests of the Government, and the Lessee shall have no claim of any character on account thereof against the United States or any officer, agent, or employee thereof.

X. That the United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the use and occupation of the said premises, or for damages to the property of the Lessee, or for injuries to the persons of the Lessee, or for damages to the property or injuries to the persons of the Lessee's officers, agents, servants, or employees, or others who may be on said premises at their invitation or the invitation of any one of them arising from governmental activities, [INSERT FOLLOWING IF LESSEE IS NOT A PUBLIC ENTITY ...AND THE LESSEE SHALL HOLD THE UNITED STATES HARMLESS FROM ANY AND ALL SUCH CLAIMS, EXCEPT TO THE EXTENT AS PRESCRIBED BY LAW, SUCH DAMAGE OR INJURY DIRECTLY ARISING FROM OR INCIDENT TO GOVERNMENT ACTIVITIES].

X. That during the term of this Lease, the Lessee shall at its own cost and expense procure from a reputable insurance company acceptable to the Government and maintain a public liability insurance policy or policies, which policy or policies will protect the Government from any and all liability for all injuries to any person or persons and damages to the property, of any person or persons, which may arise from or be incident to the Lessee's use and occupancy of the leased property. The amount of insurance contained therein shall not be construed to be a limitation of the liability of the Lessee. The Lessee shall furnish to the said officer, a Certificate or Certificates of Insurance to satisfactorily evidence said coverage. However, the Lessee shall have the right to self insure. In such event, the Lessee, in lieu of submitting said policies, will submit to said officer a statement to qualify and claim self insurance.

X. That for such period as the Lessee is in possession of the leased property pursuant of the provisions and conditions of this Lease, the Lessee shall procure and maintain at its cost a standard fire and extended coverage insurance policy or policies on the leased property to the full insurable value thereof. The Lessee shall procure such insurance from any responsible company or companies, and furnish either the original policy or policies or



certificate of insurance to the District Engineer. The policy or policies evidencing such insurance shall provide that in the event of loss thereunder the proceeds of the policy or policies, at the election of the Government, shall be payable to the Lessee to be used solely for the repair, restoration or replacement of the property damaged or destroyed, any balance of the proceeds not required for the repair, restoration or replacement of the property damaged or destroyed, to be paid to the Government, and that in the event the Government does not elect by notice in writing to the insurer within 60 days after the damage or destruction occurs to have the proceeds paid to the Lessee for the purposes hereinabove set forth, then such proceeds shall be paid to the Government, provided, however, that the insurer, after payment of any proceeds to the Lessee in accordance with the provisions of the policy or policies shall have no obligation or liability with respect to the use or disposition of the proceeds by the Lessee. Nothing herein contained shall be construed as an obligation upon the Government to repair, restore, or replace the leased property or any part thereof, with regard to property being damaged or destroyed which may rise from or be incident to the Lessee's use and occupancy of said premises. In the event of being self insured, the Lessee, in lieu of submitting said policies, will submit to said officer a statement to qualify and claim self insurance.

X. That the Lessee shall at all times exercise due diligence in the protection of the demised premises against damage or destruction by fire and other causes.

X. That any property of the United States damaged or destroyed by the Lessee incident to the Lessee's use and occupation of the said property shall be promptly repaired or replaced by the Lessee to the satisfaction of the said officer, or in lieu of such repair or replacement the Lessee shall, if so required by the said officer, pay to the United States money in an amount sufficient to compensate for the loss sustained by the United States by reason of damages to or destruction of Government property.

X. That the Lessee shall comply with all applicable Federal, State, county, and municipal laws, ordinances, and regulations of the locale where the said demised premises are located, with regard to construction, sanitation, licenses or permits to do business, and all other matters.

X. That, on or before the date of expiration of this Lease or its termination by the Lessee, the Lessee shall vacate the demised premises, remove the property of the Lessee therefrom, and restore the premises to good order and condition, damages beyond the control of the Lessee and due to fair wear and tear excepted. If, however, this Lease is revoked, the Lessee shall vacate the premises, remove said property therefrom, and restore the premises to the condition aforesaid within such time as the Secretary of the Army may designate. In either event, if the Lessee shall fail or neglect to remove said property and so restore the premises, then at the option of the Secretary of the Army, said property shall either become the property of the United States without compensation therefore, or the Secretary of the Army may cause it to be removed and the premises to be restored at the expense of the Lessee, and no claim for damages against the United States of its officers or agents shall be created by or made on account of such removal and restoration work.

X. That all notices to be given pursuant to this Lease shall be addressed, if to the Lessee to [INSERT NAME AND COMPLETE MAILING ADDRESS OF LESSEE]; if to the Government to the [INSERT NAME AND COMPLETE MAILING ADDRESS OF DISTRICT], and a courtesy copy furnished the [INSERT NAME AND COMPLETE MAILING ADDRESS OF MILITARY INSTALLATION IF MILITARY PROPERTY OR NAME AND COMPLETE MAILING ADDRESS OF CIVIL WORKS PROJECT], or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope, or wrapper, addressed as aforesaid and deposited postage prepaid (or, if mailed by the Government, deposited under its franking privilege) in a Post Office or branch Post Office regularly maintained by the United States Government.

X. The Lessee and the Government warrants that no person or selling agency has been employed or retained to solicit or secure this Lease upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty either party shall have the right to annul this Lease without liability or in its discretion to

require the Lessee to pay, in addition to the Lease consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

X. That the facility shall be used by the Lessee in such manner that it will not interfere with the operation [MISSION/PURPOSE] of the [INSTALLATION/PROJECT] as determined by the [INSTALLATION COMMANDER/PROJECT MANAGER].

X. That it is understood that this Lease addresses only the real estate aspects of use by the Lessee of the premises, and that operational matters arising from such use and other services shall be governed by any agreement or agreements pertaining to such matters, made in accordance with existing regulations between the Lessee and the officer having immediate jurisdiction over the premises, including but not limited to the Proposal which was submitted as [DESCRIBE LESSEE'S PROPOSAL, INCLUDE DATE OF PROPOSAL & ANY EXHIBITS OR ATTACHMENTS], being designated as Exhibit "[X]" attached hereto and made a part hereof.

X. That this Lease may be terminated by the Secretary of the Army on thirty (30) days notice during any national emergency, [IN THE EVENT OF THE CLOSURE OF THE INSTALLATION/PROJECT], in the event of a declaration of excess of a major portion of [INSTALLATION/PROJECT], or in the interest of national defense. The Government may also revoke this Lease in the event the Lessee violates any of the terms and conditions of this Lease and continues and persists in such violations for a period of fifteen (15) days after the said officer has advised the Lessee of such a violation in writing and the Lessee fails to commence to make diligent efforts to correct said violation within said fifteen (15) day period.

X. That the Lessee shall at its own cost and expense provide its own fire and police protection, as allowed by law and subsequent agreement of the parties.

X. That the Lessee shall operate the premises for the purpose hereinbefore set forth in a nondiscriminatory manner to the end that no person shall, on the ground of race, color, religion, age, sex, handicap or national

# HOMELESS LAWSUIT TIMELINES

